

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

Michael Akey,	:	
Plaintiff,	:	
	:	
v.	:	File No. 1:05-CV-331
	:	
Karen Haag, Phil Damone,	:	
Roderick Bates, Samantha	:	
Clark,	:	
Defendants.	:	

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
(Paper 49)

Plaintiff Michael Akey, a Vermont inmate proceeding *pro se* and *in forma pauperis*, now moves for a default judgment (Paper 49) pursuant to Fed. R. Civ. P. 55(a). In support of his motion, Akey has submitted an affidavit in which he contends that he has been unable to reach defendants' counsel to discuss the status of his outstanding discovery requests. Akey further testifies that attorney of record Matthew Viens, AAG, no longer represents the defendants.

An inability to contact opposing counsel, standing alone, does not constitute grounds for a default judgment under Rule 55(a). Aside from the possibility of untimely discovery responses, there is no indication that the defendants, each of whom is represented by the Office of the Vermont Attorney General, have failed to "otherwise

defend" this action. Fed. R. Civ. P. 55(a). If discovery is outstanding and has not been responded to, any party may file a motion to compel that complies with the requirements of the Local Rules. See Local Rule 26.1(d). Akey's motion for default judgment, however, should be DENIED.

If, as Akey submits, Attorney Viens no longer represents the defendants, it is hereby ORDERED that new counsel shall enter a Notice of Appearance within 20 days of the date of this Report and Recommendation with a copy to the plaintiff for purposes of any future correspondence.

Dated at Burlington, in the District of Vermont,
this 19th day of December, 2007.

/s/ Jerome J. Niedermeier
Jerome J. Niedermeier
United States Magistrate Judge

Any party may object to this Report and Recommendation within 10 days after service by filing with the clerk of the court and serving on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. Failure to file objections within the specified time waives the right to appeal the District Court's order. See Local Rules 72.1, 72.3, 73.1; 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b), 6(a) and 6(e).